

**NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**PROCUREMENT PROCEDURES**

**Adopted: January 12, 1981**

**8th Revision December, 2002**



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PROCUREMENT PROCEDURES  
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**NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**  
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**Adopted: January 12, 1981**

**7th Revision: April, 2001**

**I. GENERAL STATEMENT**

- A.** The purchase of goods and services through full and fair competition is Commission policy. All procurement will be conducted in a manner that provides maximum open and free competition. Unacceptable restrictions on competition include: (1) unreasonable qualification requirements placed on firms, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience requirements.
- B.** Whenever required, purchases will be made in accordance with statutes and rules through the Office of Management and Budget. N.D.C.C., Chapter 54-44.4-01.
- C.** The Commission will take affirmative steps to use small and minority businesses when possible as sources of supplies, equipment, construction, and services. Affirmative steps may include:
  - 1. Placing qualified small, minority and women's businesses on solicitation lists.
  - 2. Solicitation of small and minority businesses whenever they are potential sources.
  - 3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
  - 4. Where possible, establishing delivery schedules which will encourage participation by small and minority business.
  - 5. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of

Commerce and the Community Services Administration as required by the Federal Government.

6. If any subcontracts are to be let, the prime contractor will take the affirmative steps in 1 through 5 above.
- D. Except as otherwise provided by state law, the procurement policy will apply to the Commission, its contractors and subcontractors.
- E. Procurement policy provisions will be followed in procurements involving use of federal grant funds. However, in procurements involving uses of state funds, Commission compliance with procurement policy provisions is discretionary.
- F. Standard contract provisions will be incorporated into relevant Commission contracts. However, in any contract, the Commission may agree to change, add, or delete contract provisions to the extent that such changes, additions, or deletions are not inconsistent with federal and state law.

## II. **DEFINITIONS AND MISCELLANEOUS POLICY PROVISION**

- A. **Audit Trail.** An audit trail is a series of records that makes it possible for an auditor to easily trace transactions. All procurement and contract administration actions should be documented to establish an audit trail.
- B. **Commission.** The Commission is the North Dakota Public Service Commission.
- C. **Construction Maintenance.** Repair of previously reclaimed abandoned mine land sites.
- D. **Contract.** A contract is a written agreement between the Commission and the contractor setting forth obligations, including: performance of work, furnishing of labor and materials, and the basis of payment. A Commission contract usually includes specified standard provisions and any other provisions and documents designated as part of the contract.
- E. **Contract Administration.** Contract administration is the process of monitoring a contractor's performance under a contract, insuring that all the terms and provisions of the contract are satisfied, and paying contract

invoices. The contract administration function is jointly assigned to the procurement officer, the project manager, and contract officer.

- F. Contract Execution.** A contractor may not begin work until a contract has been executed. The Commissioners or a designated representative, as provided for in Policy No. 5-01-93(0), are the only persons authorized to execute contracts to which the Commission is a party.
- G. Contractor.** The contractor is the individual, partnership, firm, corporation, company, or any acceptable combination or joint venture contracting with the Commission for performance of prescribed work.
- H. Contractor Selection.** Contractor selection is the process of choosing a contractor from all those that submitted a bid or proposal to provide goods or services sought by the Commission. Among factors which may be considered when selecting a contractor are:
1. Whether the offeror's bid, proposal, or statement is responsive to the invitation to bid or request for proposal or standards for unsolicited proposals.
  2. Whether the offeror has the technical ability and resources to perform in the manner described in its bid or proposal.
  3. Whether the offeror has the financial ability and resources to complete the project.
  4. Whether the contractor is responsible as shown by its integrity, compliance with public policy, prior contracts with the Commission, and record of past performance with the State of North Dakota.
  5. For construction bids, whether the bidder is the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
  6. The Commission reserves the right to waive minor irregularities in a bid or proposal and the right to reject any and all bids. The Commission has the authority to require literal and exact compliance with all requirements specified in its request for bids or proposals. These factors will be

evaluated by the Commission's procurement officer or a selection committee of knowledgeable people.

- I. Emergency.** Any catastrophic event to property or person that requires an immediate remedy.
- J. Final Report.** Following project close-out and final payment, the project manager will submit, to the procurement office and the contract officer, a final report evaluating the quality of the contractor's performance, including: adequacy of communication, timeliness, reliability, attention to detail, interest in accomplishing quality project work, and interest in giving advice to produce the best value for the state. The final report may serve as a basis for subsequent procurement analysis. The procurement officer or the procurement officer's designee will present a report to the Commission when conditions may warrant removal of a contractor from a Commission Bidder List or Request For Proposal List.
- K. Invitation for Bid Request for Proposal.** An invitation for bid (IFB) or a request for proposal (RFP) is a solicitation issued by the Commission with the intent of eventually procuring a contractor to perform a particular service or deliver a particular product. The IFB or RFP must contain the following: the scope of work required or product specifications; the date, time, and place of bid opening or proposal closing; and evaluation factors to be used. Bids and proposals will be solicited in a manner that is consistent with Commission policy and state and federal law.
- L. Preference.** Preference will be given to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services, goods, merchandise, supplies, equipment, structures, and reclamation services. Nonresident bidders will be given preference equal to the preference given or required by the state of the nonresident bidder, seller, or contractor (N.D.C.C. 44-08-01).
- M. Procurement.** Procurement is the purchase of goods or services. There are four methods of procurement for goods or services: small purchase

procedures, competitive sealed bids (formal advertising), competitive negotiation, and non-competitive negotiation (sole-source procurement).

- N. Procurement Officer.** The procurement officer or the procurement officer's designee is the Commission employee charged with the responsibility of directing the procurement process. This person may also draft a proposed contract and assist the project manager in monitoring a contractor's performance. This person works with the Commission, Commission Executive Secretary, and project manager during the procurement and contract administration process.
- O. Project Closeout.** The project closeout is a written verification that all the requirements of the project have been satisfied; it is based on a final technical and financial review. The review may include an audit. When all the contract work has been completed, the project will be closed-out. Following Commission acceptance of the project closeout, the contractor will receive final project payment.
- P. Proposal-Bid.** A proposal is any offer of other submission presented to the Commission by a potential contractor and used as a basis for contractor selection. Proposals are submitted by firms or individuals interested in undertaking projects for the Commission and, unless unsolicited, are based on the scope of work description set forth in the RFP issued by the Commission. Bids are similar to proposals. However, while proposals generally relate to the submission of work plans and costs for the provisions of services, bids usually involve the offer of specific materials and construction work and address physical specifications and fixed or unit prices.
- Q. Subcontractor.** A subcontractor is an individual, partnership, firm, corporation, company, or any acceptable combination or joint venture to which the contractor sublets part of the contract.

### **III. PSC EMPLOYEE AND PUBLIC CONTRACTOR CODE OF CONDUCT**

#### **A. General Rule**

No Commissioner, Commission employee, or agent will participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. A conflict would arise when the Commissioner, the employee, or agent; any member of his immediate family; his partner; or an organization which employs or is about to employ the Commissioner, Commission employee, his immediate family member, or partner has financial or other interest in the firm selected for award.

#### **B. Gifts**

1. Bidders and Commission contractors and subcontractors and their employees or agents will not directly or indirectly offer nor will Commissioners or employees directly or indirectly accept or solicit any gift, gratuity, entertainment, favor, loan, or any other thing of monetary value which might reasonably be interpreted as intended to secure a contract or favorable treatment in award, amendment, or administration of a contract.
2. During an audit or inspection, Commissioners, employees, or agents will neither solicit nor accept gratuities, food, favors, or anything of monetary value from a bidder, contractor, or party to a sub agreement.
3. As a general rule, project managers, inspectors, and any other employees of the Commission should refrain from engaging in after-hour socialization with contractors and their employees during the contract performance period.
4. No political contribution may be offered, solicited, or accepted for the purpose of affecting the award, amendment, or administration of a contract.

### **IV. Procurement Procedural Requirements**

#### **A. Proposed Procurement Action Review**

Before attempting to procure goods or services, the Commission Executive Secretary and designated procurement officer, or the procurement officer's designee, in consultation with the Commission, will discuss and determine in written memorandum form whether or not:

1. Funds are available,
2. The purchase must be processed by the Office of Management and Budget;
3. The purchase may be avoided because it is unnecessary or duplicative;
4. The purchase should be consolidated or broken out to obtain a more economical purchase;
5. A lease versus a purchase or hourly rate versus fixed fee would be most economical;
6. Greater economy and efficiency would be fostered by entering into state cooperative agreements with other state agencies for procurements or use of common goods and services; and
7. Provisions of North Dakota law prescribe procedures applicable to the particular purchase.

**B. Procurement Procedure**

1. Solicitation of offers, whether by competitive sealed bids or competitive negotiation, will:
  - a. Incorporate a clear and accurate description of the technical requirements for the material, product, service, or professional requirements to be procured. The description will not, in competitive procurements, contain features which unduly restrict competition. The description may state the quality of the material, product, or service to be procured and, when necessary, will set forth essential characteristics and standards. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirement procurement. The specific features of the named brand, which must be met by offerors, will be clearly stated.

- b. Clearly set forth requirements which offerors must meet and factors to be used in evaluating bids, proposals, or statements of qualifications.

### **C. Method of Procurement**

Procurement will be by one of the following methods: small purchase procedures, competitive sealed bids (formal advertising), competitive negotiation, or noncompetitive negotiation.

1. **Small Purchase Procedures.** Any procurement estimated by the procurement officer or the procurement officer's designee not to exceed ten thousand dollars (\$10,000) and not subject to Chapter 54-44.7, N.D.C.C., or the authority of the Office of Management and Budget may be made with small purchase procedures. Small purchase may be made when the item or service is available from more than one source, there is no public exigency or emergency, and time and expense does not justify competitive bidding. Small purchase procedure will include contact with an adequate number but not fewer than three qualified firms selected from the bidders list. The procurement officer or the procurement officer's designee will select the qualified firms. The selection of the qualified firms will be based on what the procurement officer or the procurement officer's designee knows about the experience, past performance, integrity, compliance with public policy, and financial and technical resources of the firm. Qualified firms will be selected fairly without unreasonable restrictions or procedures calculated to restrict competition. The procurement officer or the procurement officer's designee will write each firm to explain the supplies or services needed and request an offer from each firm for described supplies or services. After a reasonable time during which all potential offers have been made, the procurement officer or the procurement officer's designee will recommend to the Commission which offer to accept. Acceptance will be based on what the Commission believes will be the best use of public funds.



2. **Competitive Sealed Bids (Formal Advertising).** Competitive sealed bids (formal advertising) will be publicly solicited and a firm-fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. Bidder's preference law will apply based on N.D.C.C. 44-08-01 with consideration of out-of-state bidders based on their state preference law.
- a. For formal advertising to be used, the following conditions must be present:
    - 1) A complete and realistic specification or purchase description will be available.
    - 2) Three or more responsible suppliers must be willing and able to compete effectively for the Commission's business.
    - 3) The procurement lends itself to a firm fixed or fixed unit price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.
  - b. If formal advertising is used for procurement, the following requirements will apply:
    - 1) At minimum, twenty-one (21) days prior to the date set for opening of bids, bids will be solicited from an adequate number of known suppliers or firms. The invitation will be adequately publicized. The public notice of invitation for bids (IFB) may be published in newspapers of general circulation and in trade or professional publications of general circulation calculated to reach the type of firms needed. If such publication is undertaken, the public notice will be published once prior to the date of bid opening. At a minimum, adequate public notice of invitation for bids will include the mailing of invitation for bids to a reasonable number of parties on any applicable bidder list.

- 2) The invitation for bids, including specifications and pertinent attachments, will clearly define the items or services needed and state:
  - a) When and where the plans, drawings, and specifications may be examined; and how copies may be obtained.
  - b) The place where and the time when the bids will be publicly opened.
  - c) That each bid will be accompanied by a bidder's bond, executed by a surety company authorized to do business in this state, a certified check or a cashier's check in the sum equal to five (5) percent of the bid. A certified check or a cashier's check must be drawn on the Bank of North Dakota or a federally insured, solvent bank. If, within ten days after notice of an award, the successful bidder should fail to execute a contract with the owner, then the surety will pay unto the owner for the use and benefit of the owner five (5) percent of the bid or bids on the contract on which there is a default or the certified check or cashier's check of the bidder will be forfeited to the owner. If the principal's bid is accepted and the contract is awarded, the principal, within 10 days after notice of award, will execute a contract consistent with the terms of the bid and performance and payment bonds as specified by the Commission.
  - d) That all public contractor bidders must be licensed for the highest amount of their bids as provided by Section 43-07-05 of the North Dakota Century Code.
  - e) That the right of the Commission to reject any and all bids is reserved.
- 3) That inadvertent Commission failure to meet all procurement policy requirements will not invalidate letting.

- 4) Copies of all plans, drawings, and specifications will be filed in the Commission Abandoned Mine Lands' office. Upon written request, copies of all plans, drawings, and specifications will be mailed at cost to the office of any firm.
- 5) Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and other relevant information as may be necessary, together with the name of each bidder, will be recorded; the record and each bid will be open to public inspection.
- 6) Bids will be unconditionally accepted without alteration or correction except as authorized in this policy. Bids will be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award will be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids will set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.
- 7) Withdrawal of erroneous bids before award, or cancellation of awards or contracts based on such bid mistakes, will be permitted. After bid opening no changes in bid prices or other provisions of bids will be permitted. Except as otherwise provided, all decisions to permit the withdrawal of bids, or to cancel awards or contracts based on bid mistakes, will be supported by a written determination made by the procurement officer or procurement officer's designee.
- 8) Upon Commission approval, Commission will award a firm fixed or fixed unit price contract with reasonable promptness by written

notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids for a construction project exceed available funds as certified by the procurement officer or the procurement officer's designee, and the low responsive and responsible bid does not exceed such funds by more than five (5) percent, the procurement officer or the procurement officer's designee is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in an attempt to bring the bid within the amount of available funds.

3. **Competitive Bidding - Construction Maintenance.** Competitive bids for construction maintenance on abandoned coal mine reclamation sites will be solicited by mail, FAX or through the Internet and a firm-fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.
  - a. A complete and realistic specification or purchase description will be available.
  - b. Three or more responsible suppliers must be willing and able to compete effectively for the Commission's business.
  - c. The procurement lends itself to a firm fixed or fixed unit price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.
  - d. At a minimum, five (5) days prior to the date set to receive bids, bids will be solicited from an adequate number of known suppliers or firms. This solicitation will be in written form and provided to prospective bidders.

- e. All bidders must be licensed for the highest amount of their bids as provided by Section 43-07-05 of the North Dakota Century Code.
  - f. The right of the Commission personnel to reject any and all bids is reserved.
  - g. The inadvertent Commission failure to meet all procurement policy requirements will not invalidate letting.
  - h. Contract award, based on the lowest responsive bid, may be made by Commission personnel or through formal Commission action.
  - i. Provisions of this section do not apply to abandoned mine land emergencies.
4. Competitive Negotiation. In competitive negotiation, qualification statements or proposals are requested from a number of sources and the request is publicized. Negotiations may be conducted with sources submitting statements or proposals. Either a fixed price or cost reimbursable not-to-exceed contract will be awarded. Under some circumstances, competitive negotiation may be required. Under other circumstances, competitive negotiation is discretionary and may be used if conditions are not appropriate for the use of formal advertising or small purchase.
- a. When purchasing architect, engineering, or land surveying, research or professional services, the Commission will follow the competitive negotiation procedures specified in Chapter 54-44.7, N.D.C.C. The Commission may use the procedures described in Chapter 54-44.7, N.D.C.C., to procure other professional services including lawyers, accountants, economists, and real estate appraisers. When using the procedures described in Chapter 54.44.7, N.D.C.C., the following apply:
    - 1) Notice of invitation may be published in newspapers of general circulation and in trade or professional publications of general circulation calculated to reach the type of firms needed. Adequate public notice includes mailing of the invitation to a

reasonable number of individuals or firms on a relevant trade or professional list maintained by the Commission.

- 2) The invitation will state the relative importance of evaluation criteria used to select and rank the most qualified firms. No other factors or criteria will be used in the evaluation.
- b. An alternative to the procedures prescribed by Chapter 54-44.7 may be used to procure services other than architect's, engineer's, and surveyor's professional services, e.g., lawyers, accountants, and real estate appraisers.
  - 1) Proposals will be solicited through a request for proposal (RFP). The request for proposal will state:
    - a) The relative importance of price and other evaluation factors.
    - b) That the right of the Commission to reject any and all proposals is reserved.
    - c) That inadvertent Commission failure to meet all procurement policy requirements will not invalidate the procurement.
  - 2) Notice of the need for services will be given by the Commission through a request for proposal. At minimum, twenty-one (21) days prior to closing of the request for proposal, proposals will be solicited from an adequate number of known firms. The request will be adequately publicized. The public notice of the request for proposal may be published in newspapers of general circulation and in trade or professional publications of general circulation calculated to reach the type of firms needed. If publication is undertaken, the public notice will be published at least twenty-one days prior to the closing of the request for proposal. At minimum, adequate public notice of the request for proposal will include the mailing of the request for proposal to a reasonable number of parties on any applicable bidder list.
  - 3) The invitation should include the following:
    - a) Project title

- b) Scope of work
  - c) Description of professional services required
  - d) Submittal of a flat rate or line item price quote
  - e) Resume of personnel providing the services
  - f) Documentation of related work experiences
  - g) Scheduled performance period
  - h) Rating system used in evaluating proposals
  - i) Provide at least three client references
  - j) Conflict of interest disclaimer
- 4) Proposals will be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals will be prepared and will be open for public inspection after contract award.
- 5) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there will be no disclosure of information derived from proposals submitted by competing offerors.
- 6) Upon recommendation by the procurement officer or the procurement officer's designee, award will be made to the responsible offeror whose proposal is determined by the Commission to be the most advantageous to the state taking into consideration price and the evaluation factors set forth in the request proposal. No other factors or criteria will be used in the

evaluation. The contract file will contain the basis on which the award is made and contract negotiation minutes.

**5. Noncompetitive Negotiation (Sole-Source Procurement)**

A sound procurement system should provide for full and open competition that is both fair and equitable to all potential bidders.

However, there are times when circumstances are such that the desired action cannot be accomplished through the lengthy process of solicitation of bids. Under those unique conditions sole-source contracting may be warranted.

Sole source procurement (noncompetitive negotiation) is a method of solicitation of a proposal from only one source. When this method of procurement is proposed, written justification must be presented to the Commission or the person designated by the Commission for approval.

The following reasons may be justification for sole-source procurement:

- a. The proposed item or service is available only from a single source.
- b. The person or organization has the unique product or the special skills, knowledge, abilities to provide the required services (at the exclusion of others) and is considered the preeminent deliverer of that product or service at the time of selection.
- c. Emergency or severe time constraints preclude issuing a formal Request for Proposals.
- d. The service is available within the existing structure of state or local government. The following steps should be followed to secure a sole-source contract:
  - 1) Draft a written justification for sole-source procurement and present it to the Commission or the designated authority for approval.
  - 2) If approved, contact the proposed provider and proceed to negotiate the contract. Minutes of the negotiation session will be taken and the prepared minutes sent to the other party for concurrence.



- 3) Prepare the contract and present it to the Commission for action.  
If approved, execute the contract.

## 6. **Emergency**

An emergency includes, but is not limited to, abandoned coal mine sites. Pursuant to an amendment, dated May 25, 1993, to the North Dakota State Abandoned Mine Land (AML) Reclamation Plan, and Chapter 38-14.2-03-12, N.D.C.C. and Chapter 69-05.3-01-09, N.D.A.C., the Commission has the authority to act to address AML emergencies in a timely fashion.

- a. Right-of-Entry documentation will be obtained from the landowner, or at a minimum, permission will be received from the landowner to begin the emergency work, and a completed Right-of-Entry form will be obtained when possible.
- b. An OSM Emergency Investigation Report will be completed prior to beginning work if time permits, and then faxed to OSM. A letter of eligibility is required to be completed by the Commission Commerce Counsel.
- c. Attempt to receive bids from at least two contractors. Interested contractors will receive a faxed copy of the emergency bid sheet documents, detailing plans and specifications of the proposed work, or contractors will be handed the bid documents to be completed on-site if a pre-bid meeting is scheduled.
- d. A contractor that is currently under contract to the PSC may be utilized, providing they offer a bid that is considered reasonable by a PSC Project Manager. Commission personnel have the authority to reject any and all bids.
- e. An emergency contract will be issued (SFN 19716 Rev. 05-2000) to the contractor selected for emergency reclamation work.
- f. The successful bidder will provide a current North Dakota Contractor's license within the classification value of the project, and

be covered by a liability insurance policy of no less than \$500,000 per person and \$1,000,000 per occurrence.

**D. Unsolicited Proposal.**

1. General. An unsolicited proposal is a proposal submitted by a potential supplier which is not solicited by the Commission. The unsolicited proposal is an effective tool by which unique or innovative methods or approaches developed outside the Commission can be made available to the Commission. The offeror who submits an unsolicited proposal hopes the Commission will enter into a sole source contract with the offeror for further development of the innovative idea contained in the unsolicited proposal. If the Commission finds an offer sufficiently innovative, it will not become the subject of a competitive procurement.
2. Required Information.
  - a. Introduction. The introduction should identify the general subject matter of the proposal. It should explain the need for the work, study, or research. The need should be expressed in terms of past work or research and the manner in which the offeror believes that the proposed work study or research will support Commission activities or functions.
  - b. Objectives. The objectives must be stated as specifically as possible. The objectives are the foundation of the project and the basis of all work, study, or research plans. They may be described as hypotheses to be tested. Objectives or hypotheses may be changed, but only after a demonstration that the change is warranted. They must describe the direction of the work, study, or research to those not technically familiar as well as to those who are. If the project is contemplated to continue for more than one year, the proposal should state long-term objectives as well as short-term objectives. The stated short-term objectives, i.e., those to be accomplished within one year, should be presented in such a

manner as to show their relevance in meeting the long-term goals or objectives.

The proposal should convince the reader that meeting the projected objectives is necessary and feasible. That is, the work, study, or research is needed; and the project objectives are likely to be accomplished in a reasonable time at a reasonable cost.

The short-term objectives should be natural and discrete elements of the long-term objectives.

Both long-term and short-term objectives should include statements of the nature and extent of the anticipated results.

- c. Work, Study, or Research Plan. The work, study, or research plan should include statements regarding: methodology, a work schedule, and reports.
  - 1) Methodology. The statement of project methodology should explain how the objectives will be met or how hypotheses will be tested. The statement should specify a work plan or study or research design that describes the data to be collected and the methods to be used in collecting and analyzing the data. All elements of the methodology statement should be shown to be relevant in meeting the stated objectives or testing the stated hypotheses.
  - 2) Schedule. The schedule should be a statement that explains when each natural element (e.g. test, procedure, method, or other associated task) of the proposed methodology will start and finish. The schedule should indicate the time to be allocated for named individuals and institutions to accomplish defined tasks.
  - 3) Reports. The proposal should state when reports will be delivered to the Commission. The proposal should also state what the reports will cover. All reports should be written in a form acceptable to the relevant professional or scientific

community and the Commission. Each final report should stand alone as a finished product which meets the stated objectives of the proposal.

- d. Personnel and Management. All project staff, including the principal investigator, should be identified, their relevant qualifications described, and vitae attached. The skills and experience appropriate to the proposal should be stated. The project responsibilities of all staff should be stated.
- e. Related Experience. Proposals should include a brief description of previous experience relevant to the proposed project, including the identification of specific projects undertaken and completed and a bibliography of relevant resulting publications.
- f. Facilities and Equipment. A description of physical facilities and relevant, available project equipment to be used should be included.
- g. Other Work. The proposal should include a projection of other foreseeable workload for the period of the proposed work.
- h. Budget. The proposal must include a budget. The budget is a representation of the project expressed in dollars of estimated expenses. At minimum, where federal grant funds are involved, the budget must be submitted in a form that meets the standards of the federal grantor agency. The budgeted amounts must be realistic and well justified. Cost estimates must be in sufficient detail to enable the Commission to conduct an evaluation. Unless self-explanatory, the proposer should submit a separate explanation of how budget items were estimated. The budget must correspond to the proposer's narrative materials.
- i. Contract Details. The proposer should set forth the type of contract anticipated and the period the proposal is available for Commission acceptance. Clear statements should be included regarding the proposed duration of the effort together with any statements regarding cost sharing.

3. Commission Review and Evaluation
  - a. Timely Proposal Submission. Unsolicited proposals should be submitted sufficiently in advance of the time work is to start.
  - b. Sufficiency Review. After receiving an unsolicited proposal, the Commission Executive Secretary and designated procurement officer or the procurement officer's designee will expeditiously review the proposal to see if it contains sufficient information to enable a meaningful evaluation. If the unsolicited proposal meets this criterion, it may be evaluated in detail.
  - c. Detailed Evaluation. For detailed evaluation the proposal will be circulated among and evaluated by Commission personnel and if necessary others. In the circulation process, a cover memorandum will be attached to the proposal clearly identifying it as unsolicited. This identification is to insure that a private, i.e. non-governmental proposal is treated as proprietary and unique to the proposer. The purpose of the evaluation is to identify whether the proposal in fact contains unique or innovative ideas or concepts which have not independently been conceived by the Commission or other government agencies. Additionally, the potential contribution to the Commission's function will be evaluated together with the capabilities and qualifications of the potential contractor.
4. Proposed Procurement Action Review. If after the detailed evaluation, a favorable finding is issued by the relevant designated procurement officer, the Commission Executive Secretary and designated procurement officer or the procurement officer's designee in consultation with the Commission will discuss and determine in written memorandum form if:
  - a. Funds are available;
  - b. The purchase must be processed by the Office of Management and Budget;

- c. The purchase may be avoided because it is unnecessary or duplicative;
  - d. The substance of the proposal is available to the Commission from another source without restriction;
  - e. The proposal closely resembles a pending competitive solicitation or is otherwise not sufficiently unique to justify acceptance;
  - f. The purchase should be broken out to obtain a more economical purchase;
  - g. A lease versus a purchase or hourly rate versus fixed fee would be most economical;
  - h. Greater economy and efficiency would be fostered by entering into state cooperative agreements with other state agencies for procurements or use of common goods and services;
  - i. There are compelling reasons for non-competitive procurement; and
  - j. North Dakota law sets purchase procedures.
5. Method of Procurement. If in addition to receiving a favorable detailed evaluation the unsolicited proposal passes the proposed procurement action review, the Commission may direct the relevant procurement officer or the procurement officer's designee to conduct a negotiated non-competitive procurement.
6. Limited Commission Use of Data. Restrictive statements inserted by the private or non-governmental proposer that restrict the Commission's use of the submitted data to evaluation of the unsolicited proposal will be heeded. Even when the Commission receives an unsolicited proposal which does not contain such restrictive statements, if the Commission determines that detailed evaluation by personnel outside of state government is required, the Commission will obtain written permission from the prospective private or non-governmental contractor prior to release of the proposal for evaluation. When an unsolicited proposal is submitted to a non-governmental evaluator, the Commission will secure

a written agreement from the evaluator not to disclose the information contained in the proposal.

**E. Procurement Officer.**

1. Designation. The procurement officer or the procurement officer's designee will be designated by motion of the Commission. Ordinarily, the procurement officer or the procurement officer's designee for a project may be the Commission division director of the division most closely connected with the project goals.
2. Duties. The procurement officer or the procurement officer's designee will:
  - a. Administer Commission procurement policy.
  - b. Cooperate with the Commission Executive Secretary and the Office of Management and Budget to ensure orderly procurement of goods and services.
  - c. With the approval of the Commission, appoint, when necessary, a sufficient number of evaluation committee members from Commission staff and other state agencies.
  - d. Establish and maintain programs for inspection, testing and acceptance of supplies, services, and construction.
  - e. Make written evaluation committee and other reports to the Commission recommending award.
  - f. After Commission approval, send a notification of Commission procurement decisions to all interested persons.
3. Powers. In addition to other powers prescribed, the procurement officer or the procurement officer's designee will have the power to:
  - a. Adopt operational procedures consistent with Commission procurement policy and sound procurement practices on such matters including but not limited to bid or proposal solicitation, evaluation, and contract negotiation, award, administration, and enforcement; and

- b. Designate a project manager from within the Commission. If none is designated, the procurement officer or the procurement officer's designee may also be the project manager.

**F. Executive Secretary.**

1. The Commission Executive Secretary will supervise Commission procurement officers or the procurement officer's designees and cooperate with the Office of Management and Budget to establish and maintain Commission procurement in compliance with Commission policy and state law.
2. The Abandoned Mine Lands Division procurement officer or the procurement officer's designee may maintain bidder lists. The lists may be used as a basis for making future solicitations. A mailing list need not be limited to the firms on a bidder list and a mailing list need not include all firms on the bidder list. The procurement officer or the procurement officer's designee, may adopt procedures on bidder list use and bidder removal or suspension from bidder lists.

**G. Evaluation Committee.**

1. The procurement officer or the procurement officer's designee may establish, with Commission approval, a formal selection committee to evaluate proposals received for consultant and other professional services. The committee should contain broad-based representation with a variety of skills needed to perform proposal evaluation.
2. The committee will recommend the most economical proposal expected to meet the state's needs. The evaluators will exercise impartial judgment in evaluating the relative merits of each proposal. When appropriate, legal counsel should be involved to assist in making the final recommendation.

**H. Notice and Appeal.**

1. Those participating in a small purchase, competitive sealed bid, or competitive negotiation will receive by mail notice of the Commission's



intent to award or notice of the Commission's selection and ranking of firms. The notice will state:

- a. The interested person has the right to appeal the Commission's decision for cause;
  - b. The right must be exercised within a specified time;
  - c. The right must be exercised in writing; and
  - d. The reasons for appeal must be stated.
2. If there is an appeal a formal hearing will be scheduled and interested parties notified as the Commission deems just and reasonable.

**I. Project Manager.**

1. The key person in the state-contractor relationship is the state's project manager. This individual will control and monitor the contractor's activities and provide the proper level of leadership and coordination which will satisfy the Commission's obligations under the contract and which will be conducive to a healthy business relationship.
2. Since a professional service contract may contain only a limited description of the overall scope of the project of service to be performed by the contractor, the project manager must be able to distinguish between specific provisions in the contract and that which he desires from a professional point of view.
3. The project manager does not have unilateral authority to change the scope of work or specification under a contract. Should circumstances arise where the project manager deems immediate changes, suspensions or delays are necessary or prudent, the Commission Executive Secretary and the procurement officer or the procurement officer's designee will be notified. The project manager will write detailed contemporaneous memoranda regarding the change, suspension or delay, and report to the full Commission at the earliest opportunity. A change, suspension, or delay will not take effect without formal Commission action unless the Commission has otherwise formally authorized the project manager to effect changes, suspension, or delays.

4. Among the many responsibilities assigned by the procurement officer or the procurement officer's designee to the project manager, the following tasks should be given serious consideration:
  - a. The project manager should initiate a contract review with the contractor's team leader and prime assistants. This conference should include a detailed examination of the contract documents, project time schedules, and the establishment of procedures for submission of contract progress reports. Required interviews with Commission staff should be scheduled through the project manager to minimize disruption of the Commission operation.
  - b. The project manager should require frequent and periodic conferences with the contractor and staff, even though the quality and performance of the contractor has been excellent. Such conferences should be divided into two parts. The first part should address past performance and the second should address the future activities of the contractor. Matters of substance should be fully documented.
  - c. The project manager must recognize that indecision and procrastination will be two major problems in working with a professional service contractor. Time is money to a consultant, and he is prepared to demand payment for downtime and delays if the fault lies with the agency regardless of the contractual stipulations related to price. The project manager must comprehend that time does not normally cure or solve technical problems and may very well compound them beyond repair; timely decisions are crucial to the success of the project.
  - d. The project manager must establish himself as a leader in the state-contractor relationship. Experience has shown that where a vacuum exists in state leadership, professional service contractors tend to move forward and fill the void in order to complete and deliver the

end products. Consequently, quality control may not be maintained in the process.

While input from various levels of state management is necessary to insure acceptability of the end product, certain limitations must be noted. In order for the professional service contractor to accomplish his tasks, the various opinions, needs, and desires of state management must be polarized into one unit or else he is faced with changing directions with each level of management and individual. The state must be of one voice. This single voice must be the contract document with the project manager as its spokesman.

The project manager should establish an internal accounting system for the contractor's invoices and supporting documentation and correspondence. This system is necessary if the contract is based upon a not-to-exceed price or contains any variables which may affect payment. A clear, precise audit trail of all activities related to payment of funds and acceptances of deliverables must be maintained and accessible to the contract officer at all times.

#### **J. The Commission**

The Commission will make the final determination of award based on recommendation of the procurement officer.

#### **K. Contract Officer**

1. The procurement officer or the procurement officer's designee insures that terms of the contract are met. The procurement officer or the procurement officer's designee will:
  - a. Insure that all laws, executive orders, clearances, and approvals are met and that sufficient funds are available;
  - b. Insure that contractors receive impartial, fair, and equitable treatment.

## **V. BONDS**

### **A. Bid Security**

1. Bid security is required for all competitive sealed bidding for construction contracts when the procurement officer exceeds \$100,000. Bid security must be either a bond provided by a security company authorized to do business in this state, a certified check, or a cashier's check. This does not prevent the requirement of bid securities on construction contracts under \$100,000 when the circumstances warrant.
2. Bid security will be in an amount equal to at least five (5) percent of the amount of the bid.
3. When the invitation for bids requires security, noncompliance requires that the bid be rejected.
4. After the bids are opened, they will be irrevocable for the period specified in the invitation for bids, except as provided in competitive sealed bidding. If a bidder is permitted to withdraw its bid before award, no action will be taken against the bidder or the bid security.

### **B. Contract Performance and Payment Bonds.**

1. When a construction contract is awarded, the following bonds or security will be delivered to the Commission and will become binding on the parties upon execution of the contract:
  - a. A performance bond satisfactory to the Commission, executed by a surety company authorized to do business in this state in an amount equal to 100 percent of the price specified in the contract; and
  - b. A payment bond satisfactory to the Commission, executed by a surety company authorized to do business in this state and by the U.S. Treasury Department, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond will be in an amount equal to 100 percent of the price specified in the contract.

2. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, for which a payment bond is furnished under this section and who has not been paid in full therefore before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, will have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractor furnishing said payment bond, will have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice will be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.
3. Every suit instituted upon a payment bond will be brought in a North Dakota court, but no suit will be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

**C. Bond Forms and Copies**

1. The Commission will supply the form of the bonds required.
2. Any person may request and obtain from the Commission a certified copy of a bond upon payment of the cost of reproduction of the bond and

postage, if any. A certified copy of a bond will be prima facie evidence of the contents, execution and delivery of the original.

**VI. CONTRACT PRICING**

The cost plus, a percentage of cost and percentage of construction cost method of contracting, will not be used. The procurement officer or the procurement officer's designee will perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles.

**VII. PROCUREMENT RECORDS**

The procurement officer or the procurement officer's designee will maintain records sufficient to detail the significant history of a procurement. These records will include information on: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the cost or price.

## **VIII. APPENDIX**

- A.** Evaluation Criteria for Request for Proposals/Competitive Negotiations
- B.** Sample Scoring System for Competitive Negotiation Type Contracts
- C.** Procedures for Competitive Negotiation Type Contracts
- D.** Sample Contract Negotiation Minutes
- E.** Procedures for Sole Source Procurement
- F.** Checklist for Work Statement (Specific Provisions) Contracts and Requests for Proposals





## **APPENDIX A**

### **Evaluation Criteria for Request for Proposals/Competitive Negotiations**



**EXAMPLE EXAMPLE EXAMPLE EXAMPLE EXAMPLE**  
**PUBLIC SERVICE COMMISSION**  
**EVALUATION CRITERIA**  
**FOR**  
**REQUEST FOR PROPOSALS/COMPETITIVE NEGOTIATIONS**  
**CASE NO. PU-314-92-1060**

The following point system will be used in evaluating the proposals submitted. The individual criterion and point system was established in the written request for proposals. Each rater will use this form to score each proposal received and accepted. The total points of all raters will be added together and divided by the number of raters to establish the final score. All rating sheets will be kept as a part of the contract file.

Quality of written proposal - 0 to 5  
Comments, if any?

\_\_\_\_\_ Points awarded

Capability including personnel qualifications, specialized experience, training, education, and performance record - 0 to 20  
Comments, if any?

\_\_\_\_\_ Points awarded

Understanding of the project - 0 to 20  
Comments, if any?

\_\_\_\_\_ Points awarded

Proposed work approach - 0 to 10  
Comments, if any?

\_\_\_\_\_ Points awarded

Price

<b>A.</b>	Lowest bid to 120%	45
<b>B.</b>	121 % to 130% =	44
<b>C.</b>	131 % to 140% =	42
<b>D.</b>	141 % to 150% =	38
<b>E.</b>	151 % to 160% =	32
<b>F.</b>	161 % to 170%	24
<b>G.</b>	171% to 180%	14
<b>H.</b>	181 % to 190%	2
<b>I.</b>	191 % and over	0

Points awarded

TOTAL POINTS AWARDED \_\_\_\_\_



## **APPENDIX B**

### **Sample Scoring System for Competitive Negotiation Type Contracts**



**SAMPLE**  
**SCORING SYSTEM**  
**FOR COMPETITIVE NEGOTIATION TYPE CONTRACTS**

<b>A.</b>	Lowest bid to 120% =	45	\$12,000 TO \$14,400
<b>B.</b>	121 % to 130% =	44	\$14,401 TO \$15,600
<b>C.</b>	131 % to 140% =	42	\$15,601 TO \$16,800
<b>D.</b>	141% to 150% =	38	\$16,801 TO \$18,000
<b>E.</b>	151 % to 160%	32	\$18,001 TO \$19,200
<b>F.</b>	161 % to 170%	24	\$19,201 TO \$20,400
<b>G.</b>	171% to 180% =	14	\$20,401 TO \$21,600
<b>H.</b>	181 % to 190% =	2	\$21,601 TO \$22,800
<b>I.</b>	191 % & OVER =	0	

This scoring sheet can be altered in terms of percentages and/or dollar amounts as long as it is done prior to sending out the invitation for proposals to a reasonable number of qualified applicants. All qualified responders to the request for proposal shall be rated using the same scoring criterion.





## **APPENDIX C**

### **Procedures for Competitive Contract Negotiations**



**PUBLIC SERVICE COMMISSION**  
**PROCEDURES FOR**  
**COMPETITIVE CONTRACT NEGOTIATIONS**

Effective date: April 24, 2001

"Competitive Negotiation" is a procurement process in which an agency selects a reasonable number of qualified Contractors to submit proposal(s) for deliverable goods or services.

The following steps are to be followed when utilizing this method of procurement:

1. Secure written approval from the Commission or the designated official for this method of procurement.
2. Develop a clear and accurate description of work to be performed.
3. Prepare a formal invitation to firms for their submission of a proposal.

The invitation should include the following;

- a. Project title
  - b. Scope of work
  - c. Description of professional services required
  - d. Submittal of a flat rate or line item price quote
  - e. Resume of personnel providing the services
  - f. Documentation of related work experiences
  - g. Scheduled performance period
  - h. Rating system used in evaluating proposals
  - i. Provide at least three client references
  - j. Commission authority to reject any and all proposals
  - k. Conflict of interest disclaimer
4. The appropriate PSC Division shall establish a selection committee to review and rate the proposals utilizing the rating criteria identified in the solicitation notice.
  5. The Commission approved policy shall be followed in the selection and award of the contract.



## **APPENDIX D**

### **Sample Contract Negotiation Minutes**



**SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE**  
**PUBLIC SERVICE COMMISSION**  
**CONTRACT NEGOTIATION MINUTES**

October 2, 2001

Time: 3:40 p.m.

Case:PU 314-92-1060 U.S.West.

Members Present: John Kapsner, Bill Binek, Pat Fahn, and Illona Jeffcoat Sacco

The meeting began by discussing the time frame of this Contract. The consensus was that the contract would begin on October 5, 1992 subject to the approval of the Commission. Because of the magnitude of the case it would be very difficult to estimate when the case would be concluded. The estimated length would be up to one year subject to negotiation for an extension if the case cannot be settled within that time frame.

The estimated cost of the work was then discussed. It was agreed that Mr.Kapsner would charge a flat rate of \$90.00 hr. which includes all clerical fees of his firm. It was agreed that Mr. Kapsner would charge 50% of the \$90.00 per hour for all time expended before 8:00 a.m. and after 5:00 p.m. for hours worked on the case while engaged in travel. It was also agreed that this would be a cost reimbursable contract and that all expenses charged would be backed up by records available to the Commission for audit.

The estimated budget line items for expenses are as follows:

1. \$90.00 per hour times 350 hours for personnel costs \$31,500.
2. Documented reimbursable expenses at the estimated costs of:
  - a. Travel. \$2,500.
  - b. Hotel/Motel. 400.
  - c. Meals. 250.
  - d. Postage. 50.
  - e. Print/Reproduction 200.
  - f. Supplies. -0-
  - g. Telephone. 150.
  - h. Other. 1,850.

\*Established at state rates based on up to four out of state trips.

\*\* Based on court reporter, transcripts, and other related costs for 5 depositions at 3 hours each.

By signature, both parties agree that this is a true and accurate representation of the negotiation meeting.

For the PSC \_\_\_\_\_

For the Contractor \_\_\_\_\_





## **APPENDIX E**

### **Procedures for Sole Source Procurement**



**PUBLIC SERVICE COMMISSION**  
**PROCEDURES FOR**  
**SOLE SOURCE PROCUREMENT**

A sound procurement system should provide for full and open competition that is both fair and equitable to all potential bidders.

However, there are times when circumstances are such that the desired action cannot be accomplished through the lengthy process of solicitation of bids. Under those unique conditions sole-source contracting may be warranted.

Sole source procurement (noncompetitive negotiation) is a method of solicitation of a proposal from only one source. When this method of procurement is proposed, written justification must be presented to the Commission or the person designated by the Commission for approval.

The following reasons may be justification for sole-source procurement:

1. The proposed item or service is available only from a single source.
2. The person or organization has the unique product or the special skills, knowledge, abilities to provide the required services (at the exclusion of others) and is considered the preeminent deliverer of that product or service at the time of selection.
3. Emergency or severe time constraints preclude issuing a formal Request for Proposal.
4. The service is available within the existing structure of state or local government.

The following steps should be followed to secure a sole-source contract:

1. Draft a written justification for sole-source procurement and present it to the Commission or the designated authority for approval.
2. If approved, contact the proposed provider and proceed to negotiate the contract. Minutes of the negotiation session shall be taken and the prepared minutes sent to the other party for concurrence.
3. Prepare the contract and present it to the Commission for action. If approved, execute the contract.



## **APPENDIX F**

### **Checklist for Work Statement (Specific Provisions) Contracts and the Requests for Proposals**



**CHECKLIST FOR**  
**WORK STATEMENT (SPECIFIC PROVISIONS)**  
**CONTRACTS AND REQUESTS FOR PROPOSALS**

The following checklist is designed to aid in the development of a good statement of work for the request for proposal or the specific provisions in any contract. This is the most important and vital part of a Request for Proposal or a Contract.

1. Does the work statement contain only essential requirements?
2. Are the specific goods or services to be delivered stated in clear unambiguous terms?
3. Are directions readily distinguishable from general information?
4. If there are any limitations or constraints on the contractor, are they identified in the statement?
5. What standards will be used to measure performance? Are they objective?
6. Are time-frames for deliverables identified? Are amounts identified?
7. Are reporting requirements (technical and progress/compliance) clear? Have timing, content, and level of detail been specified?
8. Is payment to be periodic or based upon final completion? If periodic payments, at what point (time, percent of completion, phases of completion, weighted based on importance or level of difficulty, amount of product delivered)?
9. Does the statement clearly indicate that the administrator (owner) will make the determination of what is acceptable quality of the goods or services?





**NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**CONTRACT PROCEDURES**

**Adopted: January 12, 1981**

**7<sup>th</sup> Revision December 2002**



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**NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**  
**CONTRACTPROCEDURES**

**Adopted January 12, 1981**

**5th Revision June 1995**

**I. PSC EMPLOYEE AND PUBLIC CONTRACTOR CODE OF CONDUCT**

**A. General Rule**

No Commissioner, Commission employee, or agent will participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. A conflict would arise when the Commissioner, the employee, or agent; any member of his immediate family; his partner; or an organization which employs or is about to employ the Commissioner, Commission employee, his immediate family member, or partner has financial or other interest the firm selected for award.

**B. Gifts**

Commission contractors and subcontractors and their employees or agents will not directly or indirectly offer nor will Commissioners or employees directly or indirectly accept or solicit any gift, gratuity, entertainment, favor, loan or any other thing of monetary value which might reasonably be interpreted as intended to secure a contract or favorable treatment in award, amendment, or administration of a contract.

During an audit or inspection, Commissioners, employees or agents will neither solicit nor accept gratuities, food, favors or anything of monetary value from a bidder, contractor, or party to a sub-agreement.

No political contribution may be offered, solicited or accepted for the purpose of affecting the award, amendment or administration of a contract.

**II. CHECK LIST FOR NEGOTIATING CONTRACTS**

1. Is there a clear and accurate description (in unambiguous terms) of the services to be performed?

2. When will the work begin? When will it be completed? The dates should be specified in the contract.
3. Will periodic progress reports be submitted (weekly, monthly, quarterly)?
4. What are the deliverables (written reports, statistical tables, oral testimony, etc)? Draft form or final?
5. Who has ownership of the materials produced or purchased under the contract?
6. Is there a cost/price analysis to determine if the cost is fair and reasonable?
7. What is the method of compensation (cash advance," fixed" fee, unit price, cost reimbursable)?
8. What expenses other than compensation for services will be allowed?
9. Will the contractor be allowed to contract out (sub-contract) part of the work? If so, identify options 1 through 8 of this Section that will be allowable under sub-contracts.

### **III. STANDARD CONTRACT PROVISIONS**

Reference: N.D.C.C. 43-07-01

#### **A. All Contracts.**

1. Remedies. Except as otherwise provided in this contract, all claims, counterclaims, disputes and other matters in question between the Commission and the contractor arising out of or relating to this agreement will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within North Dakota.
2. Termination For Default; Damages For Delay; Time Extensions.
  - a. If the contractor refuses or fails to prosecute the work, or any separable part with diligence to insure its completion within the time specified in the contract, or any extension of time, or fails to complete the work within that time, the Commission may, by written notice to the contractor, terminate his right to proceed with the work or that part of the work that has been delayed. In that event, the Commission may take over and prosecute the work to completion, by



contract or otherwise, and in completing the work may take possession of and use necessary materials, appliances and plant as may be on the work site. Whether or not the contractor's right to proceed with the work is terminated, he and his sureties will be liable for any damage to the Commission resulting from his refusal or failure to complete the work within the specified time.

- b. If fixed and agreed liquidated damages are provided in the contract and if the Commission terminates the contractor's right to proceed, the resulting damage will consist of the liquidated damages. The resulting damages will be the liquidated damages for the reasonable time required for final completion of the work together with any increased costs incurred by the Commission in completing the work.
- c. If fixed and agreed liquidated damages are provided in the contract and if the Commission does not terminate the contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.
- d. The contractor's right to proceed will not be terminated nor the contractor charged with resulting damage if:
  - 1) The delay in the completion of the work arises from causes other than normal weather beyond the control and without the fault or negligence of the contractor, including acts of God, acts of a public enemy, acts of the Commission in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Commission, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from causes other than normal weather beyond the control and without the fault or negligence of both the contractor and such subcontractors or suppliers, and
  - 2) The contractor, within 10 days from the beginning of the delay (unless the Commission grants additional time before the date of

final payment under the contract), will notify the Commission in writing of the causes of delay. The Commission will ascertain the facts and the extent of delay and extend the time for completing the work when in its judgment, the findings of fact justify an extension, and its findings of fact will be final and conclusive on the parties, subject only to appeal as provided in the "Remedies" clause of this contract.

- e. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, the Commission determines that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties will, if the contract contains a clause providing for termination for convenience of the Commission, be the same as if the notice of termination had been issued under the termination for convenience clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Commission, the contract will be equitably adjusted to compensate for the termination and the contract modified accordingly; failure to agree to adjustment will be subject to the "Remedies" clause of this contract.
  - f. The rights and remedies of the Commission provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
  - g. As used in paragraph d, subparagraph 1 of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.
3. Termination for Convenience.
- a. The performance of work under this contract may be terminated by the Commission by this clause in whole, or in part, whenever the Commission determines that termination is in the best interest of the state. Termination will be effected by delivery to the contractor of a

notice of termination specifying the extent performance of work under the contract is terminated, and the date upon which such termination becomes effective.

- b. After receipt of a notice of termination, and except as otherwise directed by the Commission, the contractor will:
  - 1) Stop work under the contract on the date and to the extent specified in the notice of termination;
  - 2) Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of that portion of the work under the contract not terminated;
  - 3) Terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the notice of termination;
  - 4) Assign to the Commission, in the manner, at the times, and to the extent directed by the Commission, all of the right, title and interest of the contractor under the orders and subcontracts so terminated, in which case the Commission will have the right, in its discretion, to settle or pay any or all claims arising out of the termination of orders and subcontracts;
  - 5) Settle all outstanding liabilities and all claims arising out of termination of orders and subcontracts, with the approval or ratification of the Commission to the extent it may require, which approval or ratification will be final for all the purposes of this clause;
  - 6) Transfer title to the Commission, and deliver in the manner, at the times, and to the extent directed by the Commission:
    - a) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated; and
    - b) The completed or partially completed plans, drawings, information and other property which, if the contract had

been completed, would have been required to be furnished to the Commission.

- 7) Use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Commission, any property of the types referred to in subparagraph 6 above provided, however, that the contractor:
    - a) Will not be required to extend credit to any purchaser; and
    - b) May acquire any such property under the conditions prescribed and at a price or prices approved by the Commission; and provided further that the proceeds of any such transfer of disposition will be applied in reduction of any payments to be made by the Commission to the contractor under this contract or will otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Commission may direct;
  - 8) Complete performance of the work not terminated by the notice of termination; and
  - 9) Take action as may be necessary, or as the Commission may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which the Commission has or may acquire an interest.
- c. After receipt of a notice of termination, the contractor will submit to the Commission his termination claim, in the form and with the certification prescribed by the Commission. Such claim will be submitted promptly but in no event later than one year from the effective date of termination, unless a written extension is granted by the Commission upon written request of the contractor made within the one-year period. However, if the Commission determines that the facts justify, it may receive and act upon any termination claim within the time allowed, the Commission may determine, on the basis of information available to it, the amount due the contractor by

reason of the termination and will then pay to the contractor the amount determined.

- d. Subject to the provisions of paragraph c of this clause, the contractor and the Commission may agree upon the whole or any part of the amount to be paid to the contractor by reason of the total or partial termination of work under this clause, which amount may include a reasonable allowance for profit on work done; provided that the agreed amount, exclusive of settlement costs, will not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract will be amended accordingly, and the contractor will be paid the agreed amount. Nothing in paragraph e of this clause, prescribing the amount to be paid to the contractor and the Commission to agree upon the whole amount to be paid to the contractor by reason of the termination of work under this clause, will be deemed to limit, restrict or otherwise determine or affect the amount which may be agreed upon to be paid to the contractor under this paragraph.
- e. In the event of the failure of the contractor and the Commission to agree as provided in paragraph d upon the whole amount to be paid to the contractor by reason of the termination of work under this clause, the Commission will determine, on the basis of information available to it, the amount due to the contractor by reason of the termination and will pay to the contractor the amounts determined as follows:
  - 1) With respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:
    - a) The cost of the work:
    - b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided

in paragraph b subparagraph 5 of this clause, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of work under this contract, which amounts will be included in the cost on account of which payment is made under this subparagraph, part a above; and

- c) A sum, as profit on part a above, determined by the Commission to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit will be included or allowed under this part c and an appropriate adjustment will be made reducing the amount of the settlement to reflect the indicated rate of loss; and

- 2) The reasonable cost of the preservation and protection of property incurred under paragraph b subparagraph 9 and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the contractor as the result of the termination of work under this contract.

The total sum to be paid to the contractor under subparagraph 1 above will not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the text that the Commission will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the contractor under subparagraph 1 above, the fair value, as determined by the Commission of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Commission or to a buyer pursuant to paragraph b, subparagraph 7.

- f. The contractor will have the right to dispute under the "Remedies" clause of this contract any determination made by the Commission under paragraph c or e above, except that, if the contractor has failed to submit his claim within the time provided in paragraph c above and has failed to request extension of that time, he will have no right of appeal. In any case where the Commission has made a determination of the amount due under paragraph c or e above, the Commission will pay to the contractor the following:
  - 1) If there is no right of appeal under the contract or if timely appeal has not been taken, the amount so determined by the Commission; or
  - 2) If a "Remedies" proceeding is initiated, the amount finally determined in the "Remedies proceeding.
- g. In arriving at the amount due the contractor under this clause, there will be deducted:
  - 1) All advance or other payments made to the contractor, applicable to the terminated portion of this contract;
  - 2) Any claim which the Commission may have against the contractor in connection with this contract; and
  - 3) The agreed price for, or the proceeds of sale of, any materials, supply or other things kept by the contractor or sold, under the provisions of this clause, and not otherwise recovered by or credited to the Commission.
- h. If the termination is partial, prior to the settlement of the terminated portion of this contract, the contractor may file with the Commission a request in writing for an equitable adjustment of the price specified in the contract on the continued portion of the contract (the portion not terminated by the notice of termination), and equitable adjustment as may be agreed upon will be made in the price; however, nothing will limit the right of the Commission and the contractor to agree upon the amount to be paid to the contractor for the completion of the

continued portion of the contract when the contract does not contain an established contract price for the continued portion.

4. Termination for Lack of Funding or Authority. The Commission may terminate this contract effective upon delivery of written notice to the contractor, or on any later date stated in the notice, under any of the following conditions:
  - a. If funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
  - b. If federal or state laws or rules are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - c. If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Any termination of this contract under this subsection shall be without prejudice to any obligations or liabilities of either party already accrued prior to termination

5. Labor Standards. In any contract awarded in excess of \$10,000 and in any subcontract awarded in excess of \$10,000, the contractor and its subcontractors agree to comply with Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
6. Audit; Access to Records.
  - a. The contractor will maintain books, records, documents and other evidence directly pertinent to performance of work under this



contract in accordance with generally accepted accounting principles and practices consistently applied. The federal grantor agency, the Comptroller General of the United States, the United States Department of Labor, and the Commission or any of their authorized representatives will have access to books, records, documents and other evidence for the purpose of inspection, audit and copying. The contractor will provide reasonable facilities and assistance for access and inspection.

- b. If this contract is a formally advertised, competitively awarded, fixed price contract, the contractor agrees to make paragraphs a through f of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to include paragraphs a through f of this clause in all its contracts in excess of \$10,000 and all tier subcontracts in excess of \$10,000 and to make paragraphs a through f of this clause applicable to all change orders under the contract directly related to project performance.
- c. Audits conducted under this provision will be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or auditing agency(ies).
- d. The contractor agrees to the disclosure of all information and reports resulting from access to records under paragraphs a and b above, to any of the agencies referred to in paragraph a above, provided that the contractor is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final federal grantor agency or Commission audit report will include written comments of reasonable length, if any, of the contractor.
- e. Records under paragraphs a and b above will be maintained and made available during performance on work under this contract and

until three years from the date of final payment for the project. In addition, those records which relate to any dispute appeal under federal grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, will be maintained and made available until three years after the date of resolution of the appeal, litigation, claim or exception.

- f. The right of access conferred by this clause will generally be exercised (with respect to financial records) under the following:
  - 1) Negotiated prime contracts,
  - 2) Negotiated change orders or contract amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price contract, and
  - 3) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract. However, this right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. However, the right of access may be exercised under any contract or subcontract:
    - a) With respect to records pertaining directly to contract performance, including any financial records of the contractor;
    - b) if there is any indication that fraud, gross abuse, or corrupt practices may be involved; or
    - c) If the contract is terminated for default or for convenience.
- 7. Covenant Against Contingent Fees. The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for Commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For

breach or violation of this warranty, the Commission will have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Commission, percentage, brokerage or contingent fee.

8. Copyrights and Rights In Data. The contractor agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with federal grant or state funds), technical reports, operation manuals and other work submitted with a proposal or grant application or which are specified to be delivered under this contract or which are developed or produced and paid for under this contract (referred to in this clause as "subject data") are subject to the rights of the Commission to use, duplicate and disclose the subject data, in whole or in part, in any manner for any purpose whatsoever, and have others do so. If the material is copyrightable, the contractor may copyright the material, subject to the rights in the government but the Commission and the federal government reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish and use the materials, in whole or in part, and to authorize others to do so. The contractor will include provisions appropriate to effectuate the purposes of this condition in all subcontracts expected to produce copyrightable "subject data."
9. Prohibition Against Listed Violating Facilities. (Applicable only to contracts and subcontracts in excess of \$100,000) The contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non exempt federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities. This provision requires reporting violations to the federal grantor agency and to the U.S.E.P.A. Assistant Administrator for Enforcement (EN-329).

10. Policies Relating to Energy Efficiency. The contractor agrees to follow mandatory standards and policies related to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94□163).

11. Changes.

- a. The Commission may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any changes in the work within the general scope of the contract, including changes:
  - 1) In the specifications (including drawings and designs);
  - 2) In the method or manner of performance of the work;
  - 3) In the Commission furnished facilities, equipment, materials, services or site; or
  - 4) Director acceleration in the performance of the work.
- b. Any other written order or an oral order (which in terms as used in this paragraph b will include direction, instruction, interpretation or determination) from the Commission which causes any change, will be treated as a change order under this clause, provided that the contractor gives the Commission written notice stating the date, circumstances and source of the order and that the contractor regards the order as a change order.
- c. Except as provided under the "Changes" clause, no order, statement or conduct of the Commission will be treated as a change or entitle the contractor to an equitable adjustment under the "Changes" clause.
- d. If any change under this clause causes an increase or decrease in the contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment will be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change

under paragraph b above will be allowed for any costs incurred more than 20 days before the contractor gives written notice as required; and provided further that in the case of defective specifications for which the Commission is responsible, the equitable adjustment will include any increased cost reasonably incurred by the contractor in attempting to comply with the defective specifications.

- e. If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under paragraph a above or the furnishing of a written notice under paragraph b above, submit to the Commission a written statement setting forth the general nature and monetary extent of the claim, unless this period is extended by the Commission. The statement of claim may be included in the notice under paragraph b above.
- f. No claim by the contractor for an equitable adjustment under the "Changes" clause will be allowed if asserted after final payment under this contract.

#### 12. Equitable Adjustments.

- a. Equitable adjustments will be measured by the cost impact on the contractor. The cost must be allowable, i.e., reasonable, allocable, in accordance with generally accepted accounting principles and cost accounting standards if applicable, and not limited or excluded by contract or procurement provisions.
- b. The basis pricing formula for an equitable adjustment is the difference between the reasonable cost of performing without the change or deletion and the reasonable cost of performing with the change or deletion. The equitable adjustment may not properly be used as an occasion for reducing or increasing the contractor's profit or loss, or for converting a loss to a profit or vice versa, for reasons unrelated to a change or a differing site condition. A contractor who has underestimated his bid or encountered unanticipated expense or

inefficiencies may not properly use a change order or differing site conditions as an excuse to reform the contract or to shift his own risks or losses to the Commission. Similarly, the Commission cannot use an equitable adjustment to avoid the impact of a contractor's unbalanced bid.

13. Suspension of Work.

- a. The Commission may order the contractor in writing to suspend all or any part of the work for a period of time as determined to be appropriate for the convenience of the Commission.
- b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended by an act of the Commission in administration of this contract, or by its failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment will be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension and the contract modified in writing accordingly. However, no adjustment will be made under this clause for any suspension to the extent:
  - 1) That performance would have been suspended by any other cause, including the fault or negligence of the contractor, or
  - 2) For which an equitable adjustment is provided for or excluded under any other provision of this contract.
- c. No claim under this clause will be allowed:
  - 1) For any costs incurred more than 20 days before the contractor notified the Commission in writing of the new act or failure to act involved (but this requirement will not apply to a claim resulting from a suspension order); and
  - 2) Unless the claim in an amount stated, is asserted in writing as soon as practicable after the termination of suspension, but not later than the date of final payment under the contract.

14. Invoices and Payment. Unless otherwise specified by the procurement officer or project manager:
- a. Invoices or estimate of project completion will be submitted monthly in a reasonable and detailed form.
  - b. Based on the monthly invoice or estimate of project completion, payment will be made monthly to the contractor for services rendered, work done or material furnished as follows. At least once each calendar month during the continuance of a project, the project manager, contract officer and procurement officer will meet and receive and consider the invoice or estimates of project completion furnished by the contractor. Payment will be made for such invoice or estimate in an amount of the estimated value of the services, labor and material furnished upon the contract, and of the material upon the site, if any, for use in construction, subject to retentions as follows: ten (10) percent of each estimate presented until the project is fifty (50) percent completed, with no further retainage on estimates during the continuance of the contract. However, any deliverable items will be submitted prior to payment for the period during which the item is deliverable.
  - c. The procurement officer, contract officer and project manager will pay the amount retained in such amounts and such times as are approved by the Commission, with final payment immediately following completion, close-out and acceptance of the project.
15. Right of Entry. The Commission will obtain for the contractor and his appropriate subcontractors any right of entry necessary for performance of the contract. In such cases, the contractor and subcontractors will not enter without right of entry. When exercising the right of entry, the contractor and subcontractors will take reasonable steps to explain their presence to landowners and land occupiers.
16. Insurance and Indemnity. The contractor and subcontractors will obtain and keep in force sufficient insurance coverage to protect the state, local

political subdivision, 'all their officers, agents and employees and all landowners to the project area. The contractor and subcontractor agree to hold the Commission harmless from and against loss, damage, injury or liability arising directly or indirectly from the negligent acts or omissions of the contractor, contractor's employees, agents, subcontractors, and their employees and agents. However, the procurement officer may require any offeror, contractor or subcontractor to carry various types of insurance in amounts as specified in the invitation for bid or request for proposal. If a suit is initiated or judgment entered against the Commission, the contractor and subcontractors will indemnify the Commission for any settlements made or judgment satisfied.

17. Personnel.

- a. The contractor represents that he has, or will secure at his own expense, all personnel required in performing the services under the contract. Such personnel will not be employees of the Commission.
- b. All of the services required under the contract will be performed by the contractor or under his supervision, and all personnel engaged in the work will be fully qualified and will be authorized or permitted under state and local law to perform such services.

18. Assignability. The contractor will not assign or transfer any interest in the contract without the prior written consent of the Commission; provided, however, that claims for money due or to become due to the contractor from the Commission may be assigned without such approval. Written notice of any assignment or transfer will be furnished promptly to the Commission.

19. Officials Not to Benefit. No members of or delegates to the Congress of the United States of America or federal, state and local officials or employees will be admitted to any share or part or to any benefit to arise under the contract.



20. Interest of Contractor. The contractor covenants that he presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under the contract. The contractor further covenants that in the performance of the contract, no person having any such interest will be employed.
21. Contractor Reports. For the duration of the contract period, the contractor will file a monthly report with the Commission. Unless otherwise requested by the project manager, the report will be no longer than two typewritten letter-size pages and will describe work progress, problems encountered and other pertinent information.

**B. Construction Contracts.**

1. Labor Standards. The contractor agrees that "construction" work (as defined by the U.S. Secretary of Labor) will be subject to the following labor standards to the extent applicable:
  - a. In any construction contract and subcontract, the contractor or subcontractor will agree to comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in the U.S. Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor will be prohibited from inducing by any means any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.
  - b. Provisions of the Fair Labor Standards Act of 1938 as amended apply.
2. Differing Site Conditions.
  - a. The contractor will promptly, and before such conditions are disturbed, notify the Commission in writing of:
    - 1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

- 2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract. The Commission will promptly investigate the conditions; and if it finds that the conditions do materially differ and cause an increase or decrease in the contractor's cost of or the time required for performance of any part of the work under the contract, whether or not changed as a result of such conditions, an equitable adjustment will be made and the contract modified in writing accordingly.
- b. No claim of the contractor under this clause will be allowed unless the contractor has given the notice required in paragraph a above; provided, however, the time prescribed may be extended by the Commission.
- c. No claim by the contractor for an equitable adjustment under the "Differing Site Conditions" clause will be allowed if asserted after final payment under the contract.

**C. Professional Services.**

1. Warranty. The professional services will be performed, findings obtained and reports and maps prepared according to the contract and the generally and currently accepted principles and practices.
2. Reimbursable Expenses. Unless otherwise specified, photocopies of receipts will accompany monthly invoices for all reimbursable expenses. Reimbursable expenses will be no more than as follows:
  - a. Actual travel expense not to exceed current state rates and only expenses necessary for the execution of the project including:
    - 1) Air fares;
    - 2) Rental vehicles,
    - 3) Highway mileage in company or personal vehicles.
  - b. Actual shipping charges for samples, field test equipment, etc.

- c. Subsistence (food) and lodging when overnight travel is required at current state rates. Receipts for subsistence are not required.
- d. Expendable items required for field work.
- e. Actual telephone, telex, photocopying, postage, printing, photographs, or reproduction of reports and drawings.
- f. Actual subcontracted work and special consulting services by others. Employees loaned from affiliate organizations will be involved at rates consistent with equivalent level contractor personnel.
- g. Actual analyses performed by biological, water quality, agronomic, geochemical and other laboratories will be performed on a unit cost basis.
- h. Actual rental of specialized testing or monitoring equipment required for project execution.
- i. Additional specialized equipment purchased for the project to become the Commission's property upon completion is cost reimbursable. However, such equipment will not be purchased without written Commission approval.

#### **IV. CONTRACT ADMINISTRATION**

The procurement officer with the project manager and contract officer maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

#### **V. CONTRACTOR CLAIMS**

**A.** Definition. A claim is the contractor's written demand to the Commission seeking, as a matter of right, payment, adjustment or interpretation of contract terms or other relief arising under the contract. A claim must unequivocally state that the contractor demands a decision, not merely advice, discussion or comment. An invoice is not a claim.

**B.** Statement of the Claim.

1. The statement of the claim will contain elements:

- a. A declaration: "this is a claim by contractor "X" against the North Dakota Public Service Commission."
  - b. A summary paragraph explaining the claim.
  - c. Identification of the relevant contract and contract terms.
  - d. A statement of facts, i.e., events or occurrences that give rise to the claim.
  - e. How the factual events or occurrences adversely affected the contractor's performance. The contractor must prove causation. The contractor will state the extent to which he was at fault.
  - f. Application of the law to the facts.
  - g. Express statement of the relief sought and the calculations used to determine the specific dollar amount or time sought.
  - h. Conclusion with a summary of the major elements of the claim and a legal demand for a) appropriate relief and b) a decision from the Commission.
  - i. Contractor certification by sworn affidavit that the claim is filed in good faith and is an accurate and complete statement of fact.
2. If the claim is for more than \$10,000, the contractor will provide all actual project costs categorized as follows:
- a. Labor. Each employee will be listed by name along with his responsibilities, hours and wages;
  - b. Bond, insurance and taxes. Premiums paid on bonds and property damage, liability, workmen's compensation and unemployment insurance will be listed. Social security taxes paid will be listed.
  - c. Materials. All materials and all actual material costs for all materials accepted by the project manager and permanently installed in the work will be listed. Transportation charges will be included.
  - d. Equipment. All equipment will be identified by manufacturer, model number, capacity, age, date of purchase, and purchase price or actual rental cost. Depreciation, fuel and maintenance costs for

each identified piece of equipment will also be provided. The actual cost of each equipment item used in the project will be provided.

- e. Subcontracts. All subcontracts and subcontractors and actual costs of the subcontracted work to the contractor on the project will be provided.
- f. Overhead. All overhead costs attributable to the project will be listed. Calculations will be shown.
- g. Miscellaneous. All other actual costs of the project not covered above will be listed.

## **VIII. APPENDIX**

- A.** Sample Close-Out Letter to Contractor
- B.** Sample Contract Transmittal Letter
- C.** Sample Detailed Budget Sheet for Cost Reimbursable Contracts
- D.** Check List for Negotiating Contracts
- E.** Public Service Commission Contract Numbering System
- F.** Conflict of Interest Disclaimer
- G.** Checklist for Work Statement (Specific Provisions) Contracts and Requests for Proposals
- H.** Certification of Payment to Employees, Suppliers, Subcontractors



## **APPENDIX A**

### **Sample Close-Out Letter to Contractor**





SAMPLE CLOSE-OUT  
LETTER TO CONTRACTOR

December 15, 2001

Mr. Jim Miles  
Performance Results Associates  
Management Consultants  
2915 Kavanaugh Blvd. #386  
Little Rock, AK 72205

Dear Mr. Miles:

The Public Service Commission entered into a contract with you/your firm on June 23, 2001. Contract #219, Case No. PU 400-92-399 was for the purpose of providing professional services to the Public Service Commission.

Our records indicate that all services required under the terms of the contract have been performed. Accordingly, we are preparing to close out the contract. If you disagree with this decision or have any outstanding claims for service against this contract, please notify us within ten (10) days of the date of this letter.

Once the contract is closed, no further payments for claims will be made by the Commission.

Since the Commission paid for the Geographic Wage/COL Differential Analysis produced by the Economic Research Institute, please send it to the Commission.

Please notify us immediately if you have any questions.

Sincerely,

Ron R. Dietz  
Grants and Contract Officer

cc: Illona Jeffcoat-Sacco



## **APPENDIX B**

### **Sample Contract Transmittal Letter**



SAMPLE CONTRACT TRANSMITTAL LETTER

May 20, 2001

Dr. Larry Dobesh  
Department of Economics  
University of North Dakota  
Box 8255  
Grand Forks ND 58202-8255

RE: Case No. PU-400-92-399

Dear Dr. Dobesh:

Enclosed are two original contracts for the consulting services in the above referenced case. Please execute both copies, retain one and return one for the Commission files.

If you have any questions please contact this office at 701-328-4096.

Sincerely,

Ron R. Dietz  
Grants & Contract Officer

Enclosures



## **APPENDIX C**

### **Sample Detailed Budget Sheet for Cost Reimbursable Contracts**





SAMPLE DETAILED BUDGET SHEET  
FOR COST REIMBURSABLE CONTRACTS

Contract No. \_\_\_\_\_

Page \_\_\_\_\_

BUDGET SHEET

PERSONNEL COSTS \_\_\_\_\_ \$

Salary \_\_\_\_\_ \$

Fringe Benefits \_\_\_\_\_ \$

REIMBURSABLE EXPENSES \_\_\_\_\_ \$

Travel \_\_\_\_\_ \$

Postage \_\_\_\_\_ \$

Print & Repro. \_\_\_\_\_ \$

Supplies \_\_\_\_\_ \$

Telephone \_\_\_\_\_ \$

Other (explain) \_\_\_\_\_ \$

TOTAL \_\_\_\_\_ \$

Detailed budget information

Budget modifications will only be made in writing and approved by both parties to the contract. Reimbursable expense line items within the reimbursable expenses category may exceed the amount specified as long as the total for reimbursable expenses does not exceed the reimbursable contract amount. Records for all expenses claimed (including personnel costs) must be maintained and made available for audit to the administrator.

Personnel costs must be stated in cost per unit (hours worked or items completed) or flat fee for services. If employees of the contractor are going to be engaged in the work under this contract the hourly wage for those employees of the contractor must be listed above and all actual charges must be backed by daily time distribution records.



## **APPENDIX D**

### **Check List for Negotiating Contracts**



CHECK LIST  
FOR  
NEGOTIATING CONTRACTS

1. Is there a clear and accurate description (in unambiguous terms) of the services to be performed?
2. When will the work begin? When will it be completed? The dates should be specified in the contract.
3. Will periodic progress reports be submitted (weekly, monthly, quarterly)?
4. What are the deliverables (written reports, statistical tables, oral testimony, etc.)? Draft form or final?
5. Who has ownership in the materials produced or purchased under the contract?
6. Is there a cost/price analysis to determine if the cost is fair and reasonable?
7. What is the method of compensation (cash advance, fixed fee, unit price, cost reimbursable)?
8. What expenses other than compensation for services will be allowed?
9. Will the contractor be allowed to contract out (sub-contract) part of the work? If so, identify all of the above that will be allowable under sub-contracting?



## **APPENDIX E**

### **Public Service Commission Contract Numbering System**





**PUBLIC SERVICE COMMISSION**  
**CONTRACT NUMBERING SYSTEM**

EFFECTIVE DATE APRIL 11, 2001

The numbering system for future contracts of the Public Service Commission will follow the following sequence:

1. The first two characters will be in alphabetic division identifiers (i.e. a Public Utilities Division contract would have a PU identifier).
2. The next three characters will be numeric digits that are assigned in ascending sequential order (i.e. the 418<sup>th</sup> contract would bear the number 418, the following contract would be 419).
3. The last two characters will be numeric digits that represent the calendar year in which the contract is executed (i.e. the last two digits in the contract number of a contract awarded in calendar year 2001 would be 01).

The contract number assigned in the preceding example would be PU-418-01.

The Accounting Division will issue all contract numbers. The number assigned should be included in all correspondence with the contractor and be a part of all motions and other internal actions involving the contract.



## **APPENDIX F**

### **Conflict of Interest Disclaimer**



## **CONFLICT OF INTEREST**

### **DISCLAIMER**

#### **PUBLIC SERVICE COMMISSION**

The undersigned does hereby certify there is no financial substantive interest in the utilities which are or may be parties in this proceeding. It is also certified that no business officer, partner, employee, agent, or any immediate family member has a substantive financial interest in the utilities, which are, or may be parties in this proceeding. It is further certified that, should such a financial interest occur during the period of active involvement in the proceedings, the Commission will be immediately notified and shall have the right to terminate the contract.

\_\_\_\_\_  
Applicant Organization

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title



## **APPENDIX G**

### **Checklist for Work Statement (Specific Provisions) Contracts and Requests for Proposals**





## **PUBLIC SERVICE COMMISSION**

### **CERTIFICATION OF PAYMENT TO EMPLOYEES, SUPPLIERS, SUB-CONTRACTORS**

The undersigned hereby certifies to the Public Service Commission that all of our employees engaged in work on the following project have been paid their full wages in accordance with the Fair labor Standards Act. It is further certified that all of our suppliers and or sub-contractors engaged for the purpose of fulfilling the terms of the contract on the subject project have been paid in full for their services.

Project Name: \_\_\_\_\_

\_\_\_\_\_  
Signature of authorized official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of position



## **APPENDIX H**

### **Certification of Payment to Employees, Suppliers, Sub-Contractors**



**CHECKLIST FOR**  
**WORK STATEMENT (SPECIFIC PROVISIONS)**  
**CONTRACTS AND REQUESTS FOR PROPOSALS**

The following checklist is designed to aid in the development of a good statement of work for the request for proposal or the specific provisions in any contract. This is the most important and vital part of a Request for Proposal or a Contract.

1. Does the work statement contain only essential requirements?
2. Are the specific goods or services to be delivered stated in clear unambiguous terms?
3. Are directions readily distinguishable from general information?
4. If there are any limitations or constraints on the contractor, are they identified in the statement?
5. What standards will be used to measure performance? Are they objective?
6. Are time frames for deliverables identified? Are amounts identified?
7. Are reporting requirements (technical and progress/compliance) clear? Have timing, content, and level of detail been specified?
1. Is payment to be periodic or based upon final completion? If periodic payments, at what point (time, percent of completion, phases of completion, weighted based on importance or level of difficulty, amount of product delivered)?
2. Does the statement clearly indicate that the administrator (owner) will make the determination of what is acceptable quality of the goods or services?

**"If you don't know what you're buying,  
you shouldn't be soliciting or contracting"  
or  
"stay out of the melon patch"**